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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 4643/2024, CM APPL. 19018/2024, CM APPL. 19019/2024
& CM APPL. 19020/2024
ATUL PUNJ Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Aditya Dewan & Mr. Path Tiwari,
Advs.
M: 8527611077
Email: adityadewan@gmail.com

versus

IDBI BANK & ANR. Respondents

Through: Mr. Rajiv Kapur, Mr. Akshit Kapur &
Ms. Riya Sood, Advs. for R-2.
M: 9716076533
Email: rajiv@rpkapur.com

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Date of Decision: 2nd April, 2024

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 19020/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.
2. Application is disposed of.

CM APPL. 19019/2024

3. The present application has been filed under Section 151 of Code of Civil Procedure, 1908 ("CPC") seeking permission to file lengthy list of dates and synopsis.



4. Considering the submissions made in the present application, the present application is allowed and the same is disposed of.

W.P.(C) 4643/2024 & CM APPL. 19018/2024

5. The present petition has been filed challenging the proceedings initiated by the respondent no.1-IDBI bank under the RBI circular dated 03rd July, 2017 on 'Master Directions on Frauds-Classification and Reporting by Commercial Banks and Select FIs'. The petitioner also challenges the Show Cause Notice dated 07th February, 2024 issued to the petitioner in the matter of Punj Lloyd Limited ("the company").

6. Learned Senior Counsel appearing for the petitioner submits that petitioner is an ex-director/promoter of the company, which is presently under liquidation.

7. It is submitted that the aforesaid RBI circular clearly stipulates that banks which have financed a borrower under 'multiple banking' arrangement, should take coordinated action, based on commonly agreed strategy for legal action. However, the respondent no.1-IDBI bank is acting on a standalone basis. Attention of this Court has been drawn to clause 8.9.4 and clause 8.9.5 of the RBI Circular dated 03rd July, 2017, which read as under:

"xxx xxx xxx

8.9.4 The initial decision to classify any standard or NPA account as RFA or Fraud will be at the individual bank level and it would be the responsibility of this bank to report the RFA or Fraud status of the account on the CRILC platform so that other banks are alerted. In case it is decided at the individual bank level to classify the account as fraud straightaway at this stage itself, the bank shall then report the fraud to RBI within 21 days of detection and also report the case to CBI/Police, as is being done hitherto. Further within 15 days of RFA/Fraud classification, the bank which has red flagged the account or detected the fraud would ask the consortium leader or the largest lender under MBA



to convene a meeting of the JLF to discuss the issue. The meeting of the JLF so requisitioned must be convened within 15 days of such a request being received. In case there is a broad agreement, the account should be classified as a fraud; else based on the majority rule of agreement amongst banks with at least 60% share in the total lending, the account should be red flagged by all the banks and subjected to a forensic audit commissioned or initiated by the consortium leader or the largest lender under MBA. All banks, as part of the consortium or multiple banking arrangement, shall share the costs and provide the necessary support for such an investigation.

8.9.5 The forensic audit must be completed within a maximum period of three months from the date of the JLF meeting authorizing the audit. Within 15 days of the completion of the forensic audit, the JLF shall reconvene and decide on the status of the account, either by consensus or the majority rule as specified above. In case the decision is to classify the account as a fraud, the RFA status shall be changed to Fraud in all banks and reported to RBI and on the CRILC platform within a week of the said decision. Besides within 30 days of the RBI reporting, the bank commissioning/ initiating the forensic audit should lodge a complaint with the CBI on behalf of all banks in the consortium/MBA. For this purpose, if the bank initiating the forensic audit is a private sector bank, the complaint shall be lodged with the CBI by the PSU bank with the largest exposure to the account in the consortium/MBA. If there is no PSU bank in the consortium / MBA or it is a solo bank lending by a private sector bank/foreign bank, the private bank/foreign bank shall report to the Police as per extant instructions. This would be in addition to the complaint already lodged by the first bank which had detected the fraud and informed the consortium/MBA.

xxx xxx xxx”

8. Learned Senior counsel appearing for the petitioner submits that the Show Cause Notice by the respondent no.1-IDBI bank is not only arbitrary, illegal and perverse, but is also in the teeth of the directions of the Supreme Court in the case of ***State Bank of India versus Rajesh Agarwal***¹, wherein the Supreme Court has categorically held that the lenders should provide an opportunity to the borrower, by furnishing a copy of the Audit Reports and

¹ 2023 SCC OnLine SC 342



allow the borrower, reasonable opportunities to submit a representation.

9. Learned Senior Counsel further submits that in the present case, the respondent no.1-IDBI bank has relied upon three Audit Reports in the Show Cause Notice viz., Transaction Audit Report; Forensic Audit Report of M/s Choksi and Choksi and Forensic Audit Report of M/s Ernst and Young. However, the Forensic Audit Reports have not been furnished to the petitioner, despite the request made by the petitioner in this regard.

10. Attention of this Court has been drawn to the reply dated 27th February, 2024 submitted by the petitioner to the respondent no.1-IDBI Bank, wherein the following submissions were made on behalf of the petitioner:

“xxx xxx xxx

11. Both the Master Directions and the law laid down by the Hon'ble Supreme Court in Rajesh Aggarwal require that in cases of lending under consortium or multiple banking arrangements, action under the Master Directions to classify a borrower account as fraud be taken only on the basis of a report of forensic auditor commissioned by the consortium leader or the largest lender. The modalities of appointment of such forensic auditor and the time within which such audit needs to be completed are specified in the Master Directions. It goes without saying that to classify an account as fraud, it is imperative to adhere to the stipulated conditions outlined in the Master Directions.

xxx xxx xxx

15. As regards the Chokshi FAR, the SCN adverts to a category of transactions being “Trading through Merchant Trade” as an alleged instance of fraud. However, what is interesting to note is that the Chokshi FAR, which has dealt with such transaction at page 52 does not classify this as fraud at all. The Chokshi Report only remarks that “requisite FEMA approvals for the same are not available”. I am at loss to understand as to how the SCN extrapolates this view as fraud, that too without any analysis, discussion or scrutiny whatsoever.

16. More importantly, the SCN fails to disclose that the Chokshi FAR was discussed in the meeting of consortium of lenders of PLL on



22.03.2018, wherein it was agreed that "the findings of the report does not indicate movement of lenders' funds outside approved uses and in the absence of further observations/queries, the forensic report may be considered to be closed". Ultimately, it was deliberated and decided by the consortium of lenders that "... Forensic Audit may be construed as concluded for all the Lenders except Central Bank of India which shall close the report unilaterally and inform the Consortium regarding the closure."

xxx xxx xxx

20. In so far as the E &Y FAR is concerned, please note that a copy of the said FAR has never been supplied to me. Such non-furnishing of the E & Y FAR along with the SCN is in contravention of the directions of the Hon'ble Supreme Court in Rajesh Aggarwal where it has been categorically observed that a copy of the audit report, on the basis of which action is contemplated under the Master Directions, ought to be furnished to a borrower, allowing the borrower a reasonable opportunity to explain the conclusions of the said report.

xxx xxx xxx

23. It is my understanding that owing to the E &Y FAR being inconclusive, SBI had engaged M/s. Pipara and Co. LLP ("**Pipara**") on 21.07.2023 to submit a conclusive forensic audit within 15 days. In this connection, I was approached by Pipara to provide certain clarifications, which were duly submitted by me on 23.08.2023. While I have been not provided with the final audit report issued by Pipara, given the fact that none of the lenders (including IDBI Bank) have issued any show cause notice as per the Master Directions on the basis of the report issued by Pipara, I believe that no impropriety of any kind has been concluded in the report submitted by Pipara.

24. I am surprised that for reasons best known to the Bank, the SCN does not even advert to the report issued by Pipara even though this is the most recent forensic auditor appointed by the consortium of lenders (including IDBI Bank). The reason for this strange omission appears to be the Bank's desire to suppress unfavorable evidence against itself.

25. Since no Bank has commenced any action under the Master Directions in respect of the report issued by Pipara, the exercise contemplated under Clause 8.9 of the Master Directions stands concluded without the JLF of PLL (of which IDBI is also a member) having reported PLL's account as fraud to RBI or on the CRILC platform. Therefore, once the consortium of lenders of PLL have by



majority decided not to report PLL's account as fraud to RBI or on the CRILC platform, the said decision is binding on all members of the consortium including IDBI Bank and the present proceedings cannot be unilaterally commenced by IDBI Bank. In the extant scheme of the Master Directions, one individual bank in a consortium cannot proceed with declaration of the borrower's account as fraud even whilst the majority lenders find no such impropriety or fraud in the borrower's account. To do so, will defeat the objective and purpose of clause 8.9 of the Master Directions which provides for a joint exercise by the consortium members and a decision based on majority.

xxx xxx xxx

28. In a nutshell, PLL's financial management, including the use of the funds raised from lenders has been forensically scrutinized on at least 5 occasions i.e., Chokshi and Chokshi (for the review period between 01.04.2014 to 30.06.2017), Reshma & Co. (in May 2018), SBI's Fraud Identification Committee (in November 2018), Ernst & Young (for the review period between 01.07.2017 to 31.03.2019) and M/s. Pipara and Co. LLP (in July 2023). To the best of my understanding, none of these auditors have found evidence of any act which can even remotely be classified as fraud. This is apart from the conclusion of CEIB where again no wrongdoing/impropriety was found out against PLL/myself. In view of this overwhelming evidence in the form of views expressed by no less than 5 domain experts in my favor, which views have been accepted by the majority of lenders which constitute the consortium of lenders, it is totally unclear why and on what ground, does the Bank continue to proceed against PLL and me under the Master Directions.

29. My belief that the Bank's actions in this case are not bona fide but motivated by an unrelenting pursuit of vindictiveness against me is also strengthened by the fact that it is only IDBI Bank which doggedly continues to come against me. In the past as well, the Bank had approached the Central Bureau of Investigation ("CBI"), to pursue criminal proceedings against PLL, which attempt was returned by CBI in view of the Order dated 26.03.2021 passed by Delhi High Court in Atul Punj v. IDBI Bank and Ors., [W.P.(Crl.) No. 735/2021].

xxx xxx xxx”

11. Learned Senior Counsel submits that despite request made by the petitioner, respondent no.1-IDBI bank vide letter dated 08th March, 2024,



has supplied only extracts from the Audit Reports and not the full Audit Reports. Letter dated 08th March, 2024 issued by respondent no.1-IDBI bank reads as under:

“Ref No. IDBI Bank/NMG/PLL/2595

March 08, 2024

WITHOUT PREJUDICE

*To,
Shri Atul Punj (Promoter/Director/Personal Guarantor)
Address: 10, Prithviraj Road, Delhi-110011.*

Subject: Reply to your Letter dated February 27, 2024 in response to the Show Cause Notice issued by IDBI Bank dated February 07, 2024 bearing reference no. IDBI Bank/NMG/PLL/2492.

Sir,

Please refer to your letter dated February 27, 2024 in connection with Show Cause Notice dated February 07, 2024 issued by IDBI Bank Ltd. to you in the matter of Punj Lloyd Limited, wherein you have sought information/documents from the Bank, Our reply in respect thereof is as under:

<i>Sr. No.</i>	<i>Documents sought by Director/Guarantor</i>	<i>IDBI Bank submissions</i>
<i>1.</i>	<i>Transaction Audit Report</i>	<i>Relevant extracts of the Transaction Audit Report which are being relied for declaration as fraud, is annexed herewith.</i>
<i>2.</i>	<i>Forensic Audit Report</i>	<i>Relevant extracts of the Forensic Audit Report which are being relied for declaration as fraud, is annexed herewith.</i>

You are requested to acknowledge the receipt of documents annexed.

Yours faithfully,

*Kaveri Krishnamurthy
(Dy. General Manager)”*



12. Attention of this Court has also been drawn to the documents, which have been provided to the petitioner, which show that only partial documents have been supplied to the petitioner. Thus, the Transaction Audit Report supplied to the petitioner starts from internal page 56 and only a few pages from internal page 56 to page 65 have been provided to the petitioner. Similarly, only one page has been provided *qua* the Choksi and Choksi Forensic Audit Report, i.e., page no. 26 out of 69 pages of the said Report. Similarly, for the Report submitted by M/s Ernst and Young, only two pages of executive summary have been given, though the said executive summary itself stipulates as follows:

“This executive summary is not intended to be all inclusive. It should be read in conjunction with the detailed report and not as a substitute thereof.”

13. Attention of this Court has also been drawn to the letter dated 20th March, 2024 written by the petitioner clearly raising the issue with respect to non-supply of the complete documents. Letter dated 20th March, 2024 written by the petitioner to the respondent no.1-IDBI bank, reads as under:

“xxx xxx xxx

Ref: 2/IDBISCN/2023-24

Date: 20th March, 2024.

*To,
Ms. Kaveri Krishnamurthy
Dy. General Manager
IDBI Bank Ltd.
8th Floor, Plate-B, Block-2
NBCC Office Complex
Kidwai Nagar (East),
New Delhi-110023
Tel: 011-69297100*

Subject: Reply to letter issued by IDBI Bank dated 08.03.2024 bearing



reference No. IDBI Bank/NMG/PlI/2595.

Dear Ms. Krishnamurthy,

1. I write in response to your captioned Letter dated 08.03.2024 ("Letter"), which purports to be a response to my reply dated 27.02.2024 ("Reply to the SCN") to your Show Cause Notice dated 07.02.2024 ("SCN").

2. I have received your Letter by post only on 18.03.2024.

3. I note that the Letter encloses certain documents comprising approximately 40 pages. These documents are however undated, unmarked, not paginated and incomplete. That said, and to the best of my understanding, it appears that these documents comprise of the following:

a. 32 Pages-Extracts of the Transaction Audit Report ("TAR") prepared by BDO India LLP;

b. 1 **Page**-An extract of the Forensic Audit report of Chokshi and Chokshi ("**Chokshi FAR**"); and

c. 2 **Pages**-An extract of the executive summary of the purported Forensic Audit report of Ernst & Young ("**E & Y FAR**")

4. I am constrained to state at the outset that the aforesaid documents supplied by the Bank are in stark contrast to the documents requisitioned by me in paragraphs 34 and 35 of my Reply to the SCN. As opposed to supplying to me a complete copy of the E & Y FAR and the report prepared by M/s. Pipara and Co. LLP ("**Pipara Report**") along with all underlying documents which constitute the basis for the allegations made in the SCN, the Bank has only provided 2 pages from the executive summary of the E & Y FAR. It is noteworthy that the executive summary itself states that "This executive summary is not intended to be all-inclusive. It should be read in conjunction with the detailed report and not as a substitute thereof".

5. Therefore, it is self-evident that even the full copy of the E & Y FAR has not been provided to me much less any enclosures, attachments and underlying documents. While 2 pages of the executive summary of the E & Y FAR have been shared, the Pipara Report, being the recent most audit commissioned by the consortium of lenders has not been supplied to me at all, despite my Reply to the SCN, categorically seeking a copy of the said report.

6. Apart from the above, 32 pages of the TAR and 1 page of the Chokshi



FAR have been provided along with the Letter sans any underlying documents, enclosures and attachments, on the strength of which and with reference to which, the contents of the TAR and the Chokshi FAR have been drawn.

7. In this wake, I am constrained to state that the Bank's actions in supplying incomplete documents and deliberately withholding the Pipara Report constitute a complete abuse of process and a serious and deliberate infliction of breach of principles of natural justice. The conduct of the Bank is also in complete derogation of the decision of the Hon'ble Supreme Court in State Bank of India & Ors. v. Rajesh Aggarwal & Ors.(Civil Appeal No. 7300 of 2022) ("Rajesh Aggarwal").

*8. It is completely unclear to me as to how the Bank intends to conduct an enquiry as to whether certain alleged transactions were fraudulent in nature, without so much as furnishing the complete copy of the E&Y FAR and other underlying documents which constitute the underpinning of the conclusions arrived at in the E &Y FAR and the Chokshi FAR. I cannot be expected to respond to the allegations in the SCN on merits on the basis of selective and piecemeal extracts of the E&Y FAR shared by the Bank and without having access to all underlying documents and papers basis which the allegations are made in SCN. It is regrettable that the Bank, which is supposed to be an impartial adjudicator under the Master Directions on Frauds - Classification and Reporting by commercial banks and select FIs dated 01.07.2006 issued by the Reserve Bank of India ("**Master Directions**") is conducting itself in such partisan manner designed to deprive me of the opportunity to effectively respond to the allegations raised in the SCN.*

9. The only reason for such selective disclosure by the Bank appears to be to suppress information which is favorable to me, in as much as I have already in my Reply to the SCN stated that it is my understanding that the E &Y FAR was found to be inconclusive by the consortium of lenders and it is for this reason that M/s. Pipara & Co. were commissioned as forensic auditors. Thus, I see no other reason for suppression of the complete E &Y FAR apart from the Bank's desire to manufacture a false cause of action against me. The Bank's lack of bona fides is also apparent from its wanton failure to share with me a copy of the Pipara Report, which report to the best of my knowledge, does not inculcate any wrongdoing much less any fraud against me. The Bank's action of refusing to supply the copy of the Pipara Report, is yet again a calculated omission to suppress favorable evidence in my support.

10. The fact that it is only IDBI Bank which is proceeding against me under the Master Directions, when the consortium and/or the lead lender



constituting the consortium have not proceeded with any further enquiry against me under the Master Directions after the Pipara Report, strengthens my belief that the Bank's actions are actuated by malice. This is not a case where the Bank is bona fide proceeding under the Master Directions but certain other extraneous considerations appear to be informing and guiding the actions of the Bank.

11. From all of the above it is clear that the Bank is unwilling to proceed in the matter in accordance with law. The Bank has wantonly failed to comply with the decision of the Hon'ble Supreme Court in Rajesh Aggarwal and has failed to adhere to basic tenets of natural justice. Consequently, the SCN and the entire proceedings which have commenced therefrom are wholly illegal, improper and contrary to law. The Bank cannot purge itself of the fatal infirmities in the process adopted by it under the Master Directions, unless in compliance with the letter and spirit of the judgement of the Hon'ble Supreme Court in Rajesh Aggarwal it provides to me a full copy of the E & Y FAR, Pipara Report and the underlying documents basis which the allegations (which I am called upon to answer) have been made in the in the SCN.

12. The present Letter is being addressed without prejudice to all my legal rights in the present matter and all contentions advanced by me in the Reply to the SCN, including but not limited to fact that the TAR cannot form the basis to declare me as fraud under the Master Directions.

Sincerely,

Atul Punj”

14. Learned Senior Counsel for the petitioner has also relied upon Minutes of the Consortium Meeting convened on 22nd March, 2018, wherein it was recorded as under:

“xxx xxx xxx

1. Finalization of discussion on PLL's response on findings of forensic

SBI apprised all the members that company has submitted its detailed response to lenders' observation on Forensic Audit Report. SBI invited the lenders for sharing their respective assessment or additional query/observation on the report/ findings. It was agreed that the findings of report does not indicate movement or lenders' funds outside approved



uses and in the absence of any further observations / queries, the forensic report may be considered to be closed.

Central Bank of India informed the Lenders that the Forensic Auditor should submit a concluding observation on its audit findings. SBI informed the Consortium that the Forensic Auditor has as per its mandate has duly submitted its audit findings and commented on money trail and end uses of funds disbursed by lenders, which needs to be analyzed and concluded by the lenders. Central bank of India advised lenders that it is currently awaiting for its internal approvals for the purpose.

Based on above, it was deliberated and decided that Forensic Audit may be construed as concluded for all the Lenders except Central Bank of India India which shall close the report unilaterally and inform the Consortium regarding the closure.

2. Discussion on complaint received by lenders and company's response

ICICI bank followed by few other lenders including Standard Chartered Bank, UCO Bank and Oriental Bank of Commerce informed the Consortium that they are in receipt of an email/letter leveling certain allegations against the Promoter/ Company. SBI updated the Consortium that the matter was brought to its attention and was also tabled in Core Committee meeting convened on March 09, 2018 wherein the Company was asked to submit its detailed responses to lenders.

Company clarified that they are in process of submitting the response against these allegations. Mr. Atul Punj informed the Consortium that the mail sent appears to be an attempt to malign the company and seems to be sent by a disgruntled ex-employee Mr. Punj further clarified that such malicious complaints have been circulated in past against the company, which has been duly responded up-to the satisfaction of all concerned stakeholders including regulatory bodies .

xxx xxx xxx”

15. By referring to the aforesaid Minutes of Consortium Meeting, it is submitted that the lead bank, i.e., the State Bank of India (“SBI”) had referred the matter to Central Economic Intelligence Bureau (“CEIB”), which did not report any adverse observation against the company.



16. Attention of this Court has also been drawn to the E-mail dated 13th February, 2023 issued by the SBI bank, which categorically stated that the account of the company was classified as Non Performing Asset (“NPA”). Furthermore, Forensic Audit was conducted by Choksi and Choksi and after considering the said Audit Report, the account of the company was resolved as “no fraud” by the Fraud Identification Committee. The said E-mail dated 13th February, 2023 issued by the SBI, reads as under:

“Fw: Investigation into the affairs of Punj Lloyd Limited-Reg.

From: nodalofficersfio@sbo.co.in Mon, Feb 13, 2023 06:41 PM
Subject: Fw: Investigation into the affairs of Punj Llyod Limited-Reg.
To: Pradeep Ballayan <pradeep.b@sfio.nic.in>
Cc: Prabhat Ravi <prabhat.ravi@sfio.nic.in> , sanjeev Kumar <sanjeevk.yadav@sfio.nic.in>

Dear Sir,

SFIO INVESTIGATION IN PUNJ LLYOD LTD

With reference to SFIO trail mail in the above matter, we forward herewith reply received from our SAMB 1 Delhi branch for your information & necessary action.

Pl acknowledge receipt,

*Thanks & regards,
Sanjay Rai
AGM & Nodal Officer SFIO
State Bank of India
SFIO (a unit of Corporate Centre)
LHO New Delhi
#011-23374368, 011-23374320*

From: AGMCLS.04109 <team5samb1.del@sbi.co.in>
Sent: 13 February 2023 18:29
To: nodalofficersfio@sbi.co.in
Cc: dgmsamb.del@dgmsamb.del@sbi.co.in; GM SAMRODEL <gm.samrodel@sbi.co.in>
Subject: Re: Investigation into the affairs of Punj Lloyd Limited-Reg.



Sir,

We furnish here under our response to the observations made by SFIO vide their trail mail.

The account was classified as NPA on 14.02.2017 by RBI Auditors with back dated NPA from 27.06.2015. A forensic audit in the account was conducted by Chokshi & Chokshi covering period from 01.04.2014 to 30.06.2017. The report was discussed and closed in JLM on 23.03.2018. The account was resolved as "No Fraud" by our Fraud Identification Committee on 29.11.2018. Subsequently in September 2020, IDBI declared the account as fraud on the basis of Transaction Audit Report. It was decided in JLM meeting dated 06.11.2020 to entrust the Forensic Audit covering a period from 01.07.2017 to 08.03.2019 (CIRP Commencement date). Accordingly on 25.05.2022, a Fresh Forensic Audit was assigned to E & Y. Their report is awaited. Pending receipt of the fresh Forensic Audit Report, the account has been classified as "Red Flagged Account" by FIC vide its meeting on 10.02.2023 (Resolution of the Committee is awaited).

Regards

*Prakash Singh Bisht
AGM (CL-V)
State Bank of India
Stressed Asset Management Branch-1,
12th Floor, Jawahar Vyapar Bhawan,
STC Building, 1 Tolstoy Marg, Janpath
New Delhi-110001
9971298406*

From: nodalofficersfio <nodalofficersfio@sbi.co.in>

Sent: Monday, February 13, 2023 1:45 PM

To: AGMCLS.04109 <teamSsamb1.del@sbi.co.in>

Cc: dgmsamb.del <dgmsamb.del@sbi.co.in>; GM SAMRODEL <gm.samrodel@sbi.co.in>

Subject: Fw: Investigation into the affairs of Punj Lloyd Limited-Reg:

SFIO MATTER – MOST URGENT

Dear Sir,

We are also forwarding the mail from SFIO which was also sent to branch in the morning. Pl advise us the present status of action taken by SBI. Pl refer the trail mail of SFIO for details.



*MATTER MOST URGENT,
Thanks & regards,
Sanjay Rai
AGM & Nodal Officer SFIO
State Bank of India
SFIO (a unit of Corporate Centre)
LHO New Delhi
#011-23374368, 011-23374320*

From: Pradeep Ballayan <pradeep.b@sfio.nic.in>
Sent: 10 February 2023 17:28
To: nodalofficersfio<nodalofficersfio@sbi.co.in>
Cc: Prabhat Ravi <prabhat.ravi@sfio.nic.in>; sanjeev kumar
<sanjeevk.yadav@sfio.nic.in>
Subject: Investigation into the affairs of Punj Lloyd Limited-Reg.

To,

Designated Nodal Officer,

*It is noticed that the complaint of IDBI Bank made to CBI against PLL, as per the information provided by the IDBI Bank the said complaint was returned by CBI stating that **the account was declared as fraud on the basis of transaction audit (covering most of the period after the account turned NPA) and CBI has advised to file fresh complaint along with fresh Forensic Audit Report conducted for entire relevant period.** Please provide subsequent actions taken by SBI in this regard and its present status.*

Prompt response will be appreciated.

***Regards,
Pradeep Ballayan
Sr. Assistant Director (Forensic Audit)
Serious Fraud Investigation Office
Ministry of Corporate Affairs***

17. It is further submitted that the company is facing Corporate Insolvency Resolution Process (“CIRP”) proceedings. Attention of this Court has been drawn to the application attached as *Annexure P-7*, as filed by the Resolution Professional (“RP”) before the National Company Law



Tribunal (“NCLT”). By reference to the said application, it is submitted that the petitioner is not included in the said application, as no fraud was found against the petitioner in the Transaction Report, which the RP undertook.

18. Attention of this Court has also been drawn to letter dated 21st July, 2023 issued by the lead bank SBI, thereby engaging M/s Pipara and Co., LLP for analysis of Forensic Audit Report done by Ernst and Young. Relevant portion of letter dated 21st July, 2023 issued by SBI, is extracted as below:

*“M/s Pipara & Co . LLP
Delhi Office: 1602, Ambadeep Building,
KG Marg, Connaught Place,
New Delhi-110001*

M/S PUNJ LLOYD LTD
ENGAGEMENT FOR ANALYSIS OF FORENSIC AUDIT REPORT
DONE BY E & Y & SUBMISSION OF CONCLUSIVE REPORT

We refer to your quotation dated 21.07.2023 regarding captioned subject.

2. In this connection we are pleased to appoint you to carry out the work as per the scope mentioned below on terms and conditions stated hereunder:

i. Scope of Engagement:

- Forensic Audit (FA) in the captioned account was conducted by M/s Ernst & Young for review period 01.07.2017 to 31.03.2019. EY has submitted an inconclusive Forensic Audit Report (FAR).*
- The new Forensic Auditor shall review/analyze the observations made by FA in his report and management responses stated in the executive summary of the FAR, seek additional management responses/clarifications along with supporting evidence, if required; and give the overall conclusion on the observations / forensic audit report.*
- The primary objective of this exercise is to ascertain/conclude whether*



the observations of the said FAR may be classified as events of Fraud/Wilful Default, or otherwise as per the RBI guidelines.

• The scope shall be strictly limited to the observations mentioned in the Executive Summary of the said FAR and shall not entail fact-finding or making additional observations.

• Please note that new FA has to submit a conclusive report in terms of IBA guidelines, and the engagement is as per the lenders' decision and by SBI on behalf of the lenders who are yet to take decision on the FAR submitted by E & Y.

xxx xxx xxx”

19. It is submitted that though the lead bank-SBI had engaged the aforesaid M/s Pipara and Co. LLP, however, the Show Cause Notice issued by the respondent no.1-IDBI bank does not refer to any Report with regard thereto. Learned Senior Counsel for the petitioner further submits that the petitioner has not been informed of any Report that may have been submitted by M/s Pipara and Co. LLP.

20. Issue notice.

21. Notice is accepted by learned counsel appearing for respondents.

22. At the outset, learned counsel appearing for respondent no.2-SBI submits that no action has been taken by the respondent no.2 against the petitioner herein.

23. Learned counsel appearing for the respondent no.2-SBI submits that the joint lenders meeting dated 20th November, 2023, as relied upon by the petitioner, is prior to the issuance of the Show Cause Notice dated 07th February, 2024.

24. Per contra, learned counsel for respondent no.1-IDBI bank has drawn the attention of this Court to the Show Cause Notice dated 07th February,



2024 issued by the respondent-bank to the petitioner. By referring to the aforesaid Show Cause Notice, it is submitted that the petitioner is guilty of various transactions which involve mis-utilization of funds.

25. Attention of this Court has also been drawn to the details of observation which is attached as appendix to the said Show Cause Notice pertaining to, amongst other things, mis-utilization of advance bank guarantees issued for mobilization advance.

26. Learned counsel appearing for the petitioner also submits that the petitioner is guilty of the following, i.e., transfer of shares; benefits of rapid project, Malaysia to related party; payments to unsecured related party of ₹17.38 Crores; adhoc payment of related parties while having recoverable balance from them and sale of cars to related party at a loss of ₹0.27 Crore-0.29 Crore.

27. He further submits that the details of observation, which is reflected in the appendix along with the said Show Cause Notice, contains details of eleven transactions, out of which nine transactions are covered by the Report submitted by the BDO India LLP, which has been attached as *Annexure P-6/6A* along with the present petition.

28. Learned counsel appearing for the respondent further relies upon clause 8.9.4 of the RBI Circular to submit that the respondent no.1-IDBI bank can has the authority to take an independent action. He further submits that till today, the respondent no.1-IDBI bank has not reported the petitioner as fraud or red flagged the account of the company, since the matter is still at the Show Cause Notice stage.

29. Considering the submissions made before this Court, this Court notes that the prime submission made before this Court by the petitioner is that the



respondent no.1- IDBI bank cannot proceed against the petitioner on account of the fact that there are Forensic Audit Reports already in favour of the petitioner.

30. This Court also takes note of the fact that in the Minutes of the Joint Lenders Meeting held on 20th November, 2023, it had been held as follows:

“M/s Punj Lloyd Limited - Minutes of the Joint Lenders meeting held on 20.11.2023”

A joint lenders meeting was held on 20.11.2023 in hybrid mode at 3.00 p.m. The meeting was chaired by Sri. Prakash Singh Bisht, Asstt. General Manager, SBI, SAM Branch, New Delhi.

The agenda of the meeting was as under:

To take a final view on findings of CA Firm (Pipara & Co LLP) on the forensic audit report of Ernst & Young LLP (EY), regarding declaration of account as ‘Fraud’ or ‘No Fraud’.

In the beginning, the presence of the lenders was ensured and as per the confirmation received from lenders the attendance sheet is enclosed as Annexure-I.

1. Meeting was started with a welcome note to all participants in the meetings. Thereafter, SBI advised that based on findings of Pipara & Co. LLP vide their report dated 08.10.2023 (already circulated to all lenders) they are recommending to their appropriate authority for considering the account as “No Fraud”.

2. Thereafter, SBI requested all lenders to advise their views on declaring the account as ‘fraud’ on ‘no fraud. Some of the lenders were absent from the meeting. It was decided that lead bank will send mail to all lenders who are not available in JLM to advise their views over mail latest by 22.11.2023.

Table showing opinion of lenders as discussed in JLM/ advised over mail:

S.No.	Name of the Lender	% share	Lender’s view/recommendation to appropriate authority
1.	State Bank of India	22.78	No Fraud



2.	<i>IDBI Bank Ltd.</i>	<i>13.74</i>	<i>Yet to decide</i>
3.	<i>ICICI Bank Ltd.</i>	<i>5.90</i>	<i>Absent</i>
4.	<i>Standard Chartered Bank</i>	<i>6.39</i>	<i>No Fraud</i>
5.	<i>Central Bank of India</i>	<i>7.19</i>	<i>No Fraud in line with lead bank</i>
6.	<i>The Jammu & Kashmir Bank Ltd.</i>	<i>3.73</i>	<i>Yet to decide</i>
7.	<i>Axis Bank Limited</i>	<i>3.63</i>	<i>Based on findings of the forensic audit report and internal investigation, "non-fraud", subject to majority/consensus decision by lender, (mail 21.11.23)</i>
8.	<i>Bank of Baroda</i>	<i>4.56</i>	<i>Mail dated 21.11.23, with lead bank 'No Fraud'</i>
9.	<i>LIC of India</i>	<i>1.17</i>	<i>Absent</i>
10.	<i>UCO bank</i>	<i>1.33</i>	<i>No fraud in line with lead bank (mail dated 22.11.23)</i>
11.	<i>Canara Bank</i>	<i>2.22</i>	<i>No Fraud</i>
12.	<i>Indian Overseas Bank</i>	<i>2.83</i>	<i>Yet to decide</i>
13.	<i>Union Bank of India Erstwhile Andhra Bank</i>	<i>1.33</i>	<i>No fraud in line with majority</i>
14.	<i>HDFC Bank Limited</i>	<i>1.12</i>	<i>No fraud in line with majority</i>
15.	<i>Indusind Bank Limited</i>	<i>0.89</i>	<i>No Fraud</i>
16.	<i>L&T Finance Limited</i>	<i>6.86</i>	<i>Absent</i>
17.	<i>Bank of India</i>	<i>0.79</i>	<i>Yet to decide</i>
18.	<i>Karur Vysya Bank Limited</i>	<i>1.05</i>	<i>Absent</i>
19.	<i>RBL Bank</i>	<i>0.57</i>	<i>No Fraud in line with majority</i>
20.	<i>Dhanlaxmi Bank Limited</i>	<i>0.42</i>	<i>Absent</i>
21.	<i>Tata Capital Financial Services Limited</i>	<i>0.10</i>	<i>Absent</i>
22.	<i>IFCI Limited</i>	<i>0.80</i>	<i>Absent</i>



23.	DBS Bank	1.09	Absent
24.	PNB including (E OBC)	8.74	No fraud in line with majority
25.	Exim Bank	0.41	No fraud
26.	Indian Bank	0.36	Absent
	Total	100	

No Fraud: 61.16%
Yet to decide: 21.09%
Absent: 17.75%
Fraud: 0.00%

3. IDBI bank was of the view that Forensic Auditor should also need to cover all critical aspects in its report. IDBI bank requested to cover few points under Forensic Audit which was conveyed by them vide their mail dated 18.10.2023.

SBI advised that first forensic audit was assigned by lenders to Chokshi & chokshi LLP on 13.09.2017. Thereafter, 02nd Forensic audit was assigned to Ernst & Young LLP on 01.03.2022. Since report submitted by Ernst & Young LLP (report dated 17.05.2023) was inconclusive in nature, Pipara & Co. LLP was engaged by lenders on 21.07.2023 (based on JLM decision dated 12.07.2023) for analysis of Forensic Audit report submitted by Ernst & Young LLP and submission of conclusive reports. All the 03 reports submitted by auditors are discussed in various JLMs and opportunities were given to lenders to raise their issues. Further, process of Forensic Audit is to be completed in a time bound manner. Therefore, IDBI was requested to have their independent report/ investigation regarding their queries and decide accordingly.

4. SBI requested all lenders to remit their share of fees for conducting forensic audit report by Ernst & Young LLP and Analysis of Forensic Audit report by Pipara & Co. which was circulated to all lenders vide mail dated 05.10.2023.

As there were no other issues, meeting ended with vote of thanks to Chair.”

31. Thus, it is apparent that in the Joint Lenders Meeting held on 20th



November, 2023, none of the 26 banks, who were present in the said meeting, have shown any intention of declaring the petitioner's account as '*Fraud*'

32. Considering the aforesaid, it is clear that though majority of consortium of banks have already taken a decision with respect to the account of the company as '*No Fraud*', only 21.09% of the banks have yet to decide on the issue with respect to declaration of the petitioner's account as '*Fraud*'.

33. This Court also takes note of the submission made by learned Senior Counsel for the petitioner that the petitioner has been supplied only extract of the documents viz. the Forensic Audit Reports, mention of which has been made in the Show Cause Notice dated 07th February, 2024 issued by the respondent no.1-IDBI bank.

34. Law in this regard is very clear that when a Show Cause Notice is issued, the concerned person to whom the Show Cause Notice has been issued, is required to be given full opportunity to submit the response thereto. This also entails supply of all the documents, which form the basis of the Show Cause Notice.

35. Accordingly, it is directed that all the three Audit Reports viz. Transaction Audit Report, Forensic Audit Report of M/s Choksi and Choksi and Forensic Audit Report of M/s Ernst and Young, shall be supplied to the petitioner by the respondent no.1- IDBI bank.

36. Let the needful be done within a period of two weeks from today.

37. Upon receipt of the aforesaid documents by the petitioner, the petitioner shall file a comprehensive reply within a period of two weeks thereafter.



38. Upon receipt of reply from petitioner, the respondent no.1-IDBI bank shall take a considered decision considering all the submissions made by the petitioner, including the submissions which have been recorded in today's order.

39. After considering all the relevant submissions made by the petitioner, a speaking order shall be passed by the respondent no.1-IDBI bank within a period of four weeks thereafter. It is further directed that in case the order to be passed by the respondent no.1-IDBI bank is adversarial to the interest of the petitioner, the same shall not be given effect to for a period of one week from the passing of such order by respondent no.1-IDBI bank.

40. It is clarified that this Court has not commented on the merits of the case of either of the parties. All the rights and contentions of the parties are left open.

41. It is further clarified that this Court is not stalling any proceedings that are being carried out by respondent no.1-IDBI bank.

42. At this stage, learned Senior Counsel appearing for the petitioner submits that the petitioner may also be supplied the report by M/s Pipara and Co. LLP, which was engaged by the lead bank-SBI.

43. Per contra, learned counsel appearing for respondent no.1-IDBI bank submits that in the Show Cause Notice, the respondent no.1-IDBI bank has not relied upon the report submitted by M/s Pipara and Co. LLP. However, considering the submissions made before this Court, it is directed that respondent no.2-SBI shall provide a copy of the Report that has been submitted by M/s Pipara and Co. LLP, to the petitioner within a period of two weeks from today.



44. With the aforesaid directions, the present petition is disposed of along with the pending applications.

MINI PUSHKARNA, J

APRIL 2, 2024/kr